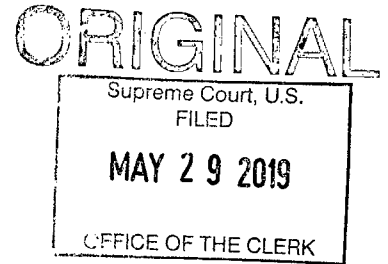


NO. 18-9519



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL WESLEY-PETITIONER

VS.

THE PEOPLE OF THE STATE OF NEW YORK-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF NEW YORK APPELLANT DIVISION :
SECOND DEPARTMENT JUDICIAL DEPARTMENT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

(1). A Petitioner Rights to have a Witness in his favor is protected by the "Due Process of Law Clause" and the Fifth, Sixth, Fourteenth, Amendment. See Washington v. Texas 388 U.S. 14 (1967).

(2) A Petitioner Right to have Newly Discover Evidence/New Evidence in his favor is Protected by the "Equal Protection of law" Fifth, Sixth, Fourteenth Amendment. See Griffin v. United States 336 U.S. 709 (1949).

(3). When the government witness's, commit perjury, misconduct did they fatally undermining confidence in the out come of petitioner trial ,deprived petitioner of a fair trial, and is the Petitioner entitle to New Trial. Which is protected by the "Due Process Clause" of the Fourteenth Amendment. See Alvarez v. United States, 808 F.Supp. 1066 (S.D.N.Y. 1992), United States v. Biberfeld, 957 F.2d 98 (3rd Cir 1992).

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

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APPENDIX B Decision of Supreme Court of the State of New York
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APPENDIX C Copy of Affidavit of Shaquanna McCray Date May 3 2018
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Investigator Irwin Blye.(A-1,A-2)

APPENDIX D Copy of Statement of Naccion McCray Date May 14 2018,
also copy of Statement of Naacion McCray given to Private
Investigator Irwin Blye.(B-1,B-2) .

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APPENDIX F Copy of Statement of Erica White gave to Ada William
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to come to Court. Date September 20, 2005 before Justice Robert
McGann in Trial of Case 1395-2002. (A-61) .

APPENDIX H Copy of Statement of Detective Ivan Borbon Grand Jury report May of 2002.(G-1).

APPENDIX I Copy of Indictment Filed May 15 2002 Indictment no. 1395-2002. (C-1).

APPENDIX J COPY OF STATEMENT OF ERICA WHITE ON DIRECT PAGE 364, WHEN ASK WAS DEFENDANT LIVING WITH YOU AT THE TIME (A-15).

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The opinion of the Supreme Court of the State of New York Appellant Division Second Department ,Judicial Department at appendix () to this petition.

The Court's opinion is Published at People V. Wesley Michael 2018is invoked u-12285.

JURISDICTION

The State of New York Appellant Division Second Department, Judicial Department, Court issued it's decision on March 4 2019. A Copy is attached at appendix.

The State of New York Appellant Division Second Department Judicial Department entered final judgment on the permission to appeal on March 4 2019, A Copy of the Judgment is attached at () . The Jurisdiction of this Court is invoked under 28 U S C 1257 (a) .

TABLE OF AUTHORITIES CITED

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OTHER

PETITION FOR WRIT OF CERTIORARI

Petitioner Michael Wesley respectfully prays that a writ of
Certiorari issue to review the judgment below.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals at
Appendix _____ to the petition and is

- ☐ report at _____ : or,
☐ has been designated for publication but is not yet
reported :or,
☐ is unpublished.

The opinion of the United States District court
appears at Appendix _____ to the petition and is

- ☐ report at _____ :or,
☐ has been designated for publication but is not yet
reported: or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the
merits appears at Appendix _____ to the petition and is

- ☒ report at Supreme Court of the State of New York
Appellate Division Second Dept. :or,
☒ has been designated for publication but is not yet
reported: or, PEOPLE V. WESLEY MICHAEL 2018-12285
DECISION MADE ON MARCH 4 2019.
☐ is unpublished .

The opinion of the Supreme Court of The State of New
York of Queen's County Supreme Court
appears at Appendix _____ to the Petition and is _____

☒ reported at Queens County Supreme Court, before
Justice Stephnie Zaro Ind 1395-2002 Made on October 12

- ☐ has been designated for publication but is not yet reported :
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appear at Appendix

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. _____
A

The jurisdiction of this Courts is invoked under 28 U. S. C 1254(1).

☐ For case from state courts:

The date on which the highest state court decided my case was A copy of that decision appears at Appendix

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at appendix.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A
The Jurisdiction of this Court is invoke under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United State Constitution Fifth Amendment.

No person shall be held answer for a capital ,or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces ,on in the militia, When in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb: nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life , liberty or property, without due process of law. nor shall private property be taken for public use, with out just compensation.

United state Constitution Sixth Amendment.

In all ,Criminal prosecution ,the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, Which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with the witness against him: to have compulsory process for obtaining witness in his favor, and to have the assistance of Counsel for his defense.

Untied State Constitution Eight Amendment.

Excessive bail not be required, nor excessive fines imposed ,nor cruel and unusual punishments inflicted.

Untied State Constitution Fourteenth Amendment.

All person's born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State where the reside , nor state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States: nor shall any state deprive any person of life ,liberty, or property, without due process of law, nor deny to any person within it's jurisdiction to equal prosection of the laws.

Equal Protection Clause. The Equal Protection Clause is a clause within the tex of the Fourteenth Amendment to the United States Constitutional. The Clause, which tool effect in 1868,provides "nor shall any state [...] deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

The Appellant Division Second Department Second Dept Judgment for Which the Petitioner seek a Writ of Certiorari Affirmed at Supreme Court of New York ,order order Dismissing an 440 Motion for New Trial in Case 1395-2002 of Queens County Supreme Court, With Newly Discover Evidence/ New Evidence.

Petitioner, Michael D. Wesley was convicted by a Jury in Queens County Supreme Court of New York, of Criminal Possession of a Weapon in the Third Degree, Not your Home or place of business CPL 265.02-4 on September of 2005, the Conviction arose of Petitioner Girl Friend Making Complaint's to the Police that he threaten to kill her.

Petitioner submitted and CPL 440. Motion to set aside Sentence , and requested to have the Sentence Set aside and request for Court to order New Trail, base off the "Newly Discover Evidence" / "New Evidence" receive by the Investigator Irwin Blye, the Interview of Shaquanna McCray, also Statement of Naccion McCray, Who inform the Investigator Irwin Blye, that she was at the house of 104-51 on 115 Street when Petitioner was arrested, and that she didn't lose eye sight of Erica White while the detectives was walking down the alley to arrest the Petitioner.

Justice Stephaine Zaro Committed Abuse of Discretion

,Arbitrary, Capricious, Failure to take into proper consideration the facts and law relating to a particular matter, the Newly Discover Evidence/New Evidence has grounds for the Court to reconsider the 440 Motion to order a New Trial , and this is a Miscarriage of Justice, by Justice Stephanie Zaro, to Deny 440 Motion and not order an evidentiary hearing for fact finding of what Petitioner Witness had knowledge of in case 1395-2002 of Queens County Supreme.

Justice Stephane Zaro Denying of the 440 Motion, is a Violation to Petitioner Constitution Rights Under Fifth Amendment, Sixth Amendment, Eight Amendment, Fourteenth Amendment, Equal Protection Clause, also Due Process Clause.

Justice Stephane Zaro, is in Violation of CANON 3 SECTION 8

State: (8) A state administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have his her case fully heard on all relevant points.

(a) Where the State administrative Law judge deems it necessary to advance the ability of a litigant not represented by an attorney or other relevant professional to be fully heard, the judge may , or where required by law the judge shall:

(i) Liberally construe and allow amendment of papers that a party not represented by an attorney has prepared:

(ii) Provide brief information concerning Statutory procedures and substantive Law, including but not limited to charge and defenses.

(iii) Provide brief information about the nature of the hearing , who else is participating in the hearing and how the hearing will be conducted.

(iV) Provide brief information about what types of Evidence that may be presented.

(V) Question witness to elicit general information and to obtain clarification.

(Vi) Modify the traditional order of taking evidences.

(Vii) Minimize the use of complex legal terms:

(Viii) Explain the basis for a ruling when made during the hearing or when made after the hearing in writing :

(iX) Make referrals to resources that may be available to assist the party in the preparation of the case.

(b) A State administrative Law Judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the records of the proceeding . A Communication between a State administration law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communication contained in the preceding paragraph.

Justice Stephanie Zaro Did none of the Above with the Petitioner regarding the 440 Motion for Set aside Sentence in Case 1395-2002 of Queens County Supreme Court.

The "Newly Discover Evidence" from Shaquanna McCray, On April 28, 2002 She was at the address of 104-51 on 115 Street Basement apt. The First time when three Detectives walk in two open Doors, To speak with Erica White about the complaint she made to the police. The Three Detectives and Erica White walk to the

front Entrance of the basement apt, there was a discussion about the door, after the discussion was over, Erica White and the Three Detectives left the basement apt , Erica White walk with the Detective to the front of 104-51 on 115 Street , because her children was playing in the front of the house.

Now on April 28 2002, about a half hour later, Petitioner come to the address of 104-51 115 Street and knock on the door , Erica White Shaquanna McCray, Shavonne McDaniels, Kianna White, all left the Basement apt, and waiting to the front porch area of the house, awaiting the arrival of the Detective's, Second time, return of the Detective's, Shaquanna McCray was also with Erica White waiting in the front pouch area of the address 104-51 on 115 street of the return of the Detective's, When the Detective's return the second time Erica White , Shavonne McDaniel's, Kianna White, and Shaqaanna McCray was awating in front pouch area of 104-51 115 Street house, Shaquanna McCray State after they ask Erica White some question and once she came back into the front pouch area of 104-51 on 115 street house, the Detective's did walk down the alley towards the basement apt to arrest the petitioner, Shaquanna McCray state that She didn't lose eye sight of Erica White, Shavonne McDanel's, or Kinna White.

Now the "Newly Discover Evidence" Shaquanna McCray make

the Indictment of 1395-2002 People V. Wesley Detective because Detective Ivan Borbon committed perjury under oath to the grand Jury back in May of 2002, that Erica White Was in the basement apt when he walk into the basement apt. Which is clearly a lie. Detective Ivan Borbon told the Grand Jury that Erica White was already waiting in the basement apt, this means that Detective Ivan Borbon Lie committed perjury Under oath to the grand Jury, also Fabricate Evidence ,Forged Evidence, Tinted False Testimony Statement, also Felt the Need to falsify Sworn Statement police report, then falsify sworn Court records and Grand Jury perjury testimony to grand jury, to receive a felony indictment against the Petitioner, all these Crime under NY Penal Law 195.00 Official Misconduct.PL. 210.40 Making an Apparently Sworn False Statement First Degree PL. 496.02 Corrupting the Government in the Fourth Degree.

The Petitioner is entitled to a New Trial Based on the Newly Discovered Evidence of Prior instance of perjury committed by the informant , as well as conflicting evidence offered by the government agent. Pursuant to Rule 33 this evidence of the Witness' perjury was more than " merely impeaching" and called into question the integrity of the verdict. The Court cited Untied States V. Stofsky 527 F2d 237 (2d Cir 1975) and United States V. Taglia 922 F2d 413 (7th Cir 1991).

Shaquanna McCray was Subpoena to come to court of trial 1395-2002 back in September 2005, See Petitioner Appendix (A-61) Shaquanna McCray was unable to come to court because she didn't have the funds, Trial Court may order a New Trial pursuant to rule 33, even if there had been no specific trial error . In order to avoid a Miscarriage of Justice a new Trial may be order if, for example , critical defense witnesses did not appear in response to a Subpoena. See United States V. Scroggins , 379 F.3d 233 (5th Cir . 2004)

Shaquanna McCray Statement (A-1) , (A-2) It Clear that the Detective Ivan Borbon Lie to the Grand Jury, and that make the Indictment 1395-2002 of Queens County Supreme Defective, and Suppose to be Dismiss under 210.40 Motion to Dismiss Indictment in furtherance of Justice. Under 210.40 (2) (e) "Any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant." As we can see the State Court of Queens County Supreme Court don't follow their own procures or law.

Now lets pay close attention to Ivan Borbon perjured himself under oath to the grand jury sometime May of 2002 in Queens County Supreme Statements.

Sometime in 2002 at grand Jury.

Q. When you got to the resident did someone let you in?

A. Yes.

Q. Who allowed you in?

A. Ms. Erica White.

(17)

Q. Has She called the police that day asking you to come to that address?

A. Yes.

Q. When you got inside, Detective Borbon would you tell us what happened?

A. She pointed to the bedroom and said that Michael Wesley was in the Bed room. I proceeded to walk to the bedroom with another two.

Hearing January 13 2004

Q. And when you got to that location what did you observe?

A. the Door were wide open, the First door and the Second down leading to the basement .As I walked in I was first in, and the other Detective's ,there was two other Detectives Mahon, And Fendrich behide me, I first walked in and Miss White was in the First room. There were two kids there and another female. Miss White was pointing to the room, indicating that where the suspect would be in.

Trial of case 1395-2002 September 19.2005.

We walk down the common drive way, found the doors open to the Basement and we walk in, I was the leading Detective, So I walked in first and the other two Detective behind me.

We walked into the basement and Ms White was to my Immediate left, by the Kitchen ,pointing to me with her hand and gesturing with her body language. I should say towards the Door in the room to the Right, the extreme right, the bedroom, which was where I proceeded to.

As we all can see this Detective Ivan Borbon Lie, and he forgot that the Complaining Witness Erica White Said the Petitioner Full Name , and said he was in the room, that show he lie and couldn't remember the first Lie, From the Grand Jury, and Threw out the rest of the Court Hearing or Trial, he State Complaining Witness Erica White made hand gesturing with her body language /Miss White was pointing to the room indicating that where the suspect would be in, all these statement's are

inconsistent and contradictions of statement's.

Now for the Second Statement given to private Investigator Irwin Blye by Naacion McCray, (B1), (B2) is consider "New Evidence" the witness and over hear Statement being made about Jihad Aka Michael Wesley, about an arrest that happen back in 2002 in Queens County, by Erica White on August 1 2015, in Sumner Housing Project in the Kiddy Park in Brooklyn New York, from and around 530 pm to 730 pm. That on August 1 2015, In Brooklyn Housing Project Sumner Housing. In the Kiddy Park.

That he was being entertain by Erica White her Sister and some other women in the kiddy Park. The People Witness Erica White was over heard talking about the arrest of Jihad aka Michael Wesley in a Kiddy Park in Brooklyn Sumner Housing Project, That the Detective Lie about being escort into the basement apt, and that the DA office of Queens County and Police Dept is Corrupt, Amount things she also stated that she believes that the weapon found in the basement apt of 104-51 on 115 belongs to someone by the Name Andren ,this was found out by Investigator Irwin Byle.

This Statement of Naacion Macray is "New Evidence" an Out of Court Statement offered for the purpose of proving the truth of the matter asserted and is there fore hear say. the witness is testifying about someone said in the past, the fact that it

is his own statement dose not change the hearsay nature of the statement.

Furthermore, Even in Common law system the Hearsay rule only applies to actual trials, hearsay is admissible as evidence in any other judicial proceedings, such as grand Jury Deliberations and proceedings before Administrative body.

Now in trial of casen1395-2002, September 2005, Erica white perjured her self under oath when she was ask .

Q. And on April 28 2002, was the Defendant living with you at that time?

A. No

Q. Was he living with you on April 22, of 2002

A. Huh?

Q. Was he living with you on April 22, 2002.

A. No.

See page (369) of Trail Min of Trail of case 1395-2002 September 2005.

Now lets pay close attention Intake Bureau Fax 286-6714 See Appendix (A-63) to the Statement Erica White gave to Ada Khan on 4-28-2002 at 2245 am and it was approving file by Henderson " State I'm here to kill you and the kids Ex BF/Gf used to live Together 1 Cic 1 yr old Tysean White 7-27-2000. See Appendix (A-63) .

Now lets pay close attention to Second Arrested and Second Intake Bureau Fax Statement Erica White give to Ada William Branigan on September 23, 2002 at 12:14 am William Branigan Date Reported August 12, 2002 Date Time of Crime 8-10-2002, 3:30 Am location of crime 104-51 115 Street Richmond Hill Where it Stated at Explain " Ex-Bf Gf Lived Togther 6 Months " See Appendix (A-64) .

Petitioner state that the Government knowingly permitted Erica White to commit perjury at trial. Erica White lie under

oath when ask did petitioner live with her at the address of 104-51 115 Street basement apt. See Erica White trial Min(page 369) Erica White lied about living with the petitioner and the government remained silent.

If the prosecutor has access to information which reveal that a prosecution witness has committed perjury, a hearing is necessary to determine what relief is appropriate. The fact that the Defendant knew that the witness was lying at trial dose not amount to waiver of this collateral attack. The key to the waiver issue is weather the defendant is aware that the prosecutor has the information in his possession which established that the witness is committing perjury. See Untied States V. Biberfeld 957 F2d 98 (3rd Cir 1992).

"If it is established that the government knowingly Permitted the introduction of false testimony reversal is virtually automatic" United States V. Wallach 935 F2d 445, 456 (2d Cir 1991) ("Wallach 1 ").

The Petitioner is entitled to a new trial based on the newly discovered evidence of prior instances of perjury committed by the information, as well as conflicting evidence offered by the government agent. Pursuant to rule 33, this evidence of the Witness' perjury was more than " Merely impeaching " and called into question the integrity of the

verdict. The court cited United States V. Stofsky 527 F2d 237 (2d Cir 1975) and United States V. Taglia 922 F. 2d 413 (7th Cir 1991).

The Trial Court acted within its discretion in granting the Defendant's motion for new trial based on discovery of newly discovered evidence. The evidence was unknown to the defense: the failure to discovery the evidence earlier was not due to lack of diligence: the evidence was not merely cumulative or impeaching : and the evidence was material and would probably produce an acquittal. See Untied States V. Piazza 647 F.3d 559 (5th Cir 2011).

This result follows from the well-established principle that knowing use of perjured testimony violates the due process clause of the Fourteenth Amendment. Perkins V. Lefevre 642 F2d 37, 40 (2d Cir 1981) Dubose V Lefever 619 f2d 973. 978 (2d Cir 1980) . So long as there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Wallach 1, 435 f2d at 456, the conviction must be set aside.. this same standard applies even where the government didn't actually know the perjury but should have known.

"[W]" here the government was unaware of a witness' perjury, a new trial is warranted , , , .If the testimony was material and the courts [is left] with a firm belief that but

for the perjured testimony, the defendant would most likely not have been convicted.

The Material Indicating untruthfulness was substantial the dignity of the United States Government will not permit the conviction of any person on tainted testimony. This conviction is tainted, and there can be no other just result than to accord Petitioner a new Trial in case 1395-2002 in Queens County.

REASONS FOR GRANTING THE PETITION

A. At Issue here is whether, the Newly Discover Evidence/ New Evidence, Can these Evidence be Disregard, Whether can petitioner stay convicted if the Arresting Officer and Complaining Witness both committed perjury under oath and the people of the State of New York Know, and did nothing to correct the error, Dose the petitioner have the right to have a witness in his favor, One of the Witness was subpoena to come to court , but was unable because they didn't have funds to make it there, Justice Stephine Zaro Committed Abuse of Discretion ,Arbitrary, Capricious, Failure to take into proper consideration the facts and law relating to a particular matter, To avoid erroneous deprivation of constitutional the rights of the petitioner, Furthermore this case is a Miscarriage of justice.

See Washington v. Texas 388 U.S. 14 (1967) (1).The right
(23)

under the Sixth Amendment of the Accused in a criminal case to have compulsory process for obtaining witnesses in his favor applies to the states through the Fourteenth Amendment. (2). The State arbitrarily denied Petitioner the right to have the material testimony for him of a witness concerning events which that witness observed, and thus denied him the right to have compulsory process for obtaining witnesses in his favor.

We have been previously called upon to decide whether the right of an accused to have compulsory process for obtaining witnesses in his favor, guarantee in Federal Trial by the Sixth Amendment, is so fundamental and essential to a fair trial that is incorporated in the Due Process Clause of the Fourteenth Amendment. At one time, it was thought that the Sixth Amendment had no application to state criminal trials. That view no longer prevails, and in recent years we have increasingly looked to the specific guarantees of the Sixth Amendment to determine whether a state criminal trial was conducted with due process of law. Court have held that Due Process requires that the accused have the assistance of counsel for his defense, that he be confronted with the witness against him, and that he have the right to speedy and public trial.

The Right of an accused to have compulsory process for obtaining witnesses in his favor stands on no lesser footing

than the other Sixth Amendment Rights that we have previously held applicable to the States.

The Court had occasion in *in oliver* , 333 U.S. 257 . (1948) to describe what it regarded as the most basic ingredient of Due Process of Law. It observed that:

" A person's right to reasonable notice of a charge against him ,and an opportunity to be heard in his defense a rights to his day in court-are basic in our system of jurisprudence : and these right include, as a minimum, a right to examine the witnesses against him ,to offer testimony ,and to be represented by counsel. 333 U.S. at 273.

The Right to offer the testimony of witness ,and to compel their attendance, if necessary ,is in plain terms the right to present a defense. the right to present the defendant's version of the facts as well as the prosecutions to the jury so it may decide where the truth lies just as an as accused has the right to confront the Prosecution's witness for the purpose of challenging their testimony , he has the right to present his own witnesses to establish a defense. This right is a fundamental element of Due Process of Law.

II

Since the right to compulsory process is applicable in this State proceeding ,the question remains whether it was violated

in the circumstances of this case. The Testimony of Shaquanna McCray Newly Discover Evidence also Naccion McCray New Evidence was denied to be accept for the Accuse 440 Motion to Set aside Sentence and order New trail in Case 1395-2002 of Queens County and the Justice Stephane Zaro, Did not order and Evidentiary hearing , So fact finding can be done, We are this called upon to decide whether the Sixth Amendment guarantee a Accused the Right under any circumstances to put his witnesses on the Stand ,as well as the right to compel their attendance in court. The resolution of this question requires some discussion of the common- law context in which the Sixth Amendment was adopted.

Observed that the right to compulsory process was include in the bill of right in reaction the notorious common-law rule that in case of treason of felony the accused was not allowed to introduce witnesses in his defense at all. Although the absolute prohibition of witnesses for the defense had been abolished in England by statue before 1787. The framers of the Constitution felt it necessary specifically to provide that defendants in Criminal Cases should be provided the means of obtaining witnesses so that their own evidence ,as well as the prosecutions ,might be evaluated by the jury.

Despite the abolition of the rule generally disqualifying

defense witnesses, the common law retained a number of restrictions on witnesses who were physically and mentally capable of testifying . To the extent that they were applicable ,they had the same effect of suppressing the truth that general proscription had Shaquanna McCray also Naccion McCray was able to testify on the grounds of interest.

Inability to call Witnesses to trial, Accuse that the Fact that Shaquanna McCray was Subpoenaed , to appear to testify at the Accuse Trial Back in September of 2005,She didn't appear to testify at trail Constitutes Reversible Error for Several reasons.

The Accuse assert that such errors include (1) the State Court Denial of Shaquanna McCray Statement for New Trial under 440 Motion to set aside Sentence in case 1395-2002 of Queens County in Queens County Supreme Court in Queens County. The Petitioner witness was Subpoena, to attend the trial but was unable to appear See United States v. Scroggins 379 F,3d 233 (5th Cir 2004) .

POLICE MISCONDUCT LEADING TO WORNFUL CONVICTIONS.

While there are many honest and ethical law enforcement , officials in the United States Justice System, there are also some law enforcement official who unfortunately commit Misconduct with regards to the Crime that they are investigating

,not only do these Law enforcement Official adversely impacts the Credibility of other honest officials, but they can literally destroy the lives of persons who are wrongfully accused and even convicted of crime, from Detective's who do not testify truthfully, to police officers that Manufacture, Destroy, and /or hide evidence, and even law enforcement officials who have improperly influenced Witness identifications and suspect confessions , there have been many instances where police Misconduct has resulted in wrongful convictions.

POLICE GIVING FALSE TESTIMONY

While there are literally thousands of upstanding law enforcement officials, there are also some police officers who are less than honest, whether their dishonesty stems from an attempt to cover up shoddy police work, a lack of willingness to do their jobs thoroughly and appropriately, or a simple desire to convict suspect whom they believe are guilty. Police officers sometimes give testimony that is exaggerated, not fully accurate and /or just plain fabricated. Due to the respect and Credibility that many Community Members attribute to law enforcement officials, It is easy to see how a police officer false testimony could result in a wrongful conviction.

under Sec 210.35 Motion to dismiss indictment Defective Grand J jury Proceeding. A grand jury proceeding is defective within

the meaning of paragraph (c) of subdivision one of section 210.20 when:

- (1) The grand jury was illegally constituted :or
- (2) The proceeding is conducted before fewer than sixteen grand jurors :or
- (3) fewer than twelve grand jurors concur in the finding of the indictment: or
- (4) The Defendant is not accorded an opportunity to appear and testify before the grand jury in accordance with the provisions of section 190.50: or
- (5) The proceeding otherwise fails to conform to the requirement of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result.

Under Sec 210.35 Motion to Dismiss Indictment Defective Grand Jury Proceeding 210.35 Motion to Dismiss Indictment : Defective grand Jury Proceeding . A grand jury proceeding is Defective within the meaning of paragraph (c) of subdivision one of section 210.20 when:

The grand jury was illegally constituted :or

The proceeding is conducted before fewer than sixteen grand jurors: or

Fewer than twelve grand jurors concur in the finding of the indictment :or

The defendant is not accorded an opportunity is not accorded an opportunity to appear and testify before the grand jury in accordance with the provisions of section 190.50:or

The proceeding otherwise fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result.

Under Sec 210.40 Motion to Dismiss Indictment : In Furtherance of Justice. An indictment or any count thereof may be dismissed in furtherance of justice, as provided in paragraph (i) of Subdivision one of section 210.20, When , even though there may be no basis for dismissal as a matter of law upon any ground specifi in paragraph (a) through (h) of said subdivision one of section 210.20, Such dismissal is require as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in justice. In determining whether such compelling factor, Consideration ,or Circumstance exists, the court must, to the extent applicable , examine and consider, individually and collectively, the following:

the seriousness and circumstances of the offense:

the extent of harm caused by the offense:

the evidence of guilt, whether admissible or inadmissible at trial:

the history ,character and condition of the defendant:

any exceptionally serious misconduct of law enforcement personal

in the investigation, arrest and prosecution of the defendant:

the purpose and effect of imposing upon the defendant a sentence authorized for the offense:

the impact of a dismissal upon the confidence of the public in the criminal justice system:

the impact of a dismissal on the safety or welfare of the community:

Where the court deems it appropriate , the attitude

of the complainant or victim with respect to the motion:_____

any other relevant a judgment of conviction would serve no useful purpose.

In addition to the ground specified in subdivision one of this section , a count alleging enterprise corruption in violation of article four hundred sixty of the penal law may be dismissed in the interest of justice where prosecution of that count is inconsistent with the stated legislative finding in said article. Upon a motion pursuant to this section, the court must inspect the evidence before the grand jury and such other evidence or information as it may deem proper.

An order dismissing an indictment in the interest of justice may be issued upon motion of the people or of the court itself as well as upon that of the defendant. Upon issuing such an order , the court must set forth its reasons there for upon the record.

The Second Circuit concludes that if a material witness recants his/her testimony , the due process clause require a new trial if the recantation is credible and the perjured testimony is highly material. It is not necessary to show that the prosecutor was revisited this decision at 900 F.2d 601 (2d Cir 1990) and again offered relief to the defendant See Sanders v. Sullivan 863 F,2d 218 (2d Cir 1988). Furthermore if the Prosecutor has access to information which would reveal that

a prosecution witness has committed perjury a hearing is necessary to determine what relief is appropriate. The fact the Defendant knew the witness was lying at trial dose not amount to a waiver of this collateral attack. The key to the waiver issue is whether the defendant is aware that the prosecutor has the information in his/her possession which established that the witness is committing perjury See United States v. Biberfeld 957 F.2d 98 (3rd Cir 1992) .

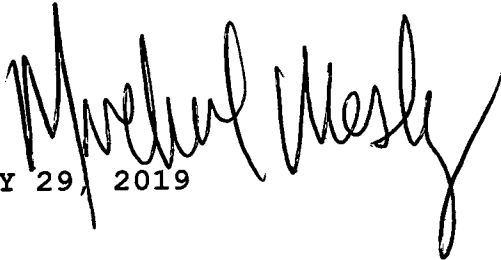
The Defendant was entitled to a New Trial based on the Newly Discover Evidence of Prior instances of Perjury Committed by the informant, as well as conflicting evidence offered by the government agent. Pursuant to evidence of the Witness perjury was more than "merely impeaching" and called into question the integrity of the verdict . The court cited United States v. Taglia 922 F.2d 413 (7th Cir 1991) Alvarez v. United States 808 F.Supp 1066 (S.D.N.Y 1992) .

CONCLUSION

The petition for a writ of certiorari should be granted.

For the foregoing reason, Petitioner Michael Wesley,
respectfully request this court to issue a Writ of Certiorari to
review the judgment of the Supreme Court of the State of New
York Appellant Division Second Department Judicial Department.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Wesley". The signature is written in a cursive, flowing style with a large initial "M".

Date MAY 29, 2019